Laborers International Union of North America, AFL-CIO, Local 282 *and* Hannin Roofing and Sheet Metal Company, Inc. and United Slate, Tile and Composition Roofers, Damp and Waterproof Workers' Association, Local 208. Case 14-CD-632

September 30, 1981

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Hannin Roofing and Sheet Metal Company, Inc., herein called the Employer, alleging that Laborers International Union of North America, AFL-CIO, Local 282, herein called the Laborers, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by United Slate, Tile and Composition Roofers, Damp and Waterproof Workers' Association, Local 208, herein called the Roofers.

Pursuant to notice, a hearing was held before Hearing Officer Michael Jamison on July 9, 1981.[1] All parties appeared[2] and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a Kentucky corporation with its principal place of business in Paducah, Kentucky, is engaged in the construction business. During the past year, the Employer purchased goods from outside the State having a value in excess of $50,000. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, as amended, and it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Laborers and the Roofers are labor organizations within the meaning of Section 2(5) of the Act.

A. *Background and Facts of the Dispute*

The Employer has a contract to construct a built-up roof on part of the Sikeston power plant in Sikeston, Missouri. The Employer is a subcontractor to Triangle Insulation of Paducah, Kentucky. Triangle Insulation is a subcontractor to Babcock & Wilcox, the general contractor. On June 3, eight roofers employed by the Employer unloaded materials at the worksite. Ernie Brown, the Laborers chief steward for this worksite, advised the Employer's job superintendent, Doug Graham, that shoveling the roofing gravel and cleaning up the roof debris should be done by employees represented by the Laborers. Brown asked Graham to speak with the Laborers business agent and principal officer, Jim Bollinger. Although he tried to reach him by phone, Graham never spoke with Bollinger. Graham did, however, consult with the Employer's president and with the business agent for Roofers Local 144 concerning the use of laborers to do the work in question and, after such consultation, on Thursday, June 4, he advised Brown that the Employer would assign the work to its employees represented by the Roofers. According to Graham, Brown then reiterated that the work belonged to employees represented by the Laborers, and also stated that "if you do not sign a laborers contract and employ 2 laborers by Friday [Bollinger] was going to put a picket on this job." Brown denied doing anything other than, on June 3, asking Graham to speak with Bollinger. In any event, beginning on June 8 and continuing through June 10, the Laborers picketed the Employer's worksite with a sign that read: "Notice to the Public. Hannin Roofing has no contract with Laborers Local 282." Pursuant to the general contractor's request, the Employer ceased its operations at the jobsite pending resolution of this dispute. At the time of the hearing the work remained unfinished.

B. *The Work in Dispute*

The work in dispute involves moving (i.e., shoveling) roofing gravel at ground level and the daily cleanup of debris resulting from the application of roofing materials at the Sikeston power plant in Sikeston, Missouri. It involves about 1 to 2 hours' work daily.

[1] All dates are in 1981.

[2] United Union of Roofers, Waterproofers and Allied Workers, Local 144, appeared at the hearing as a Party in Interest.

C. *The Contentions of the Parties*

The Employer contends that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. The Employer urges that the existing collective-bargaining agreement, employer and area practice, economy and efficiency of operation, and its assignment and preference require a finding that the work was properly assigned to employees represented by the Roofers.

The Roofers agrees with the Employer.

The Laborers takes the position that there is no jurisdictional dispute within the meaning of the Act as there exists no reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. It urges that Brown's statement could not be a threat because only Bollinger had the authority to take men off a jobsite or establish a picket line. Further, it argues that the picket line was only informational; however, it contends that, if the Board finds there is reasonable cause to believe there is such a dispute, the work in question should be assigned to laborers because the work is traditionally done by such employees, the Employer has no International or other pertinent collective-bargaining agreement with the Roofers, and area practice is to assign the work to employees represented by the Laborers. It further contends that the work in question does not require any of a roofer's specialized skills, and that economy would not dictate using roofers since there is substantial cleanup required at the worksite.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

There is evidence that on June 3 Brown, the Laborers chief steward at the site, told Graham, the job superintendent of the Employer, that the Employer would have to hire employees represented by the Laborers; that, subsequently, after Brown was informed that roofers would get the work, he warned Graham that if the Employer "did not sign a laborers contract and employ 2 laborers by Friday [the Laborers business agent] was going to put a picket on this job"[3] and that on the first workday after the Laborers deadline passed unheeded, the Laborers set up a picket at the worksite with a sign directed at the Employer. In these circumstances, we find reasonable cause to believe that the Laborers sought and demanded the disputed work, and in furtherance thereof threatened to picket and picketed the Employer to force a change in the assignment of the work, in violation of Section 8(b)(4)(i) and (ii)(D), as charged.

There is no evidence of an agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that this dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[4] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[5]

The following factors are relevant in making the determination of the dispute before us:

1. Collective-bargaining agreement

The Employer had a collective-bargaining agreement with the Roofers[6] on the Sikeston power plant job. Article II of that agreement setting forth the unit work provides, in pertinent part:

> (b) above deck roof vapor barriers of all kinds; roof insulation of all kinds, including foil and urethane composition and built-up roofing of all kinds including hot and cold applied; prepared, plastic, fluid applied, sheet applied and mastic roofing; all associated roof surfacing including aggregates, coating, traffic planks and decks and decorative finishes; and the necessary metal flashing to make watertight;
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[3] We need not conclusively resolve the conflict in testimony between Brown and Graham on this point, since the Board only is required to find there is reasonable cause to believe that Sec. 8(b)(4)(D) had been violated before making a determination of the dispute out of which the alleged unfair labor practice has arisen. *United Brotherhood of Carpenters and Joiners of America, AFL-CIO, et al. (Wendnagel & Company)*, 116 NLRB 1063, 1066 (1956).

[4] *N.L.R.B.* v. *Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[5] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

[6] The literal language of the collective-bargaining agreement would not cover the jobsite in question. Thus the geographic jurisdiction of the collective-bargaining agreement does not include any of Missouri. This limitation results from the fact that Local 208's jurisdiction does not extend to this area. Rather this project falls within the jurisdiction of neighboring Local 144, the party in interest in this case. However, Local 144 had given the Employer permission to use Local 208-represented employees on this jobsite. Since Local 208-represented employees were being used, it was their contract with the Employer, despite the limiting language as to jurisdiction, which was being applied to this jobsite.

(e) all unloading, handling and hoisting of all tools and materials to be used in connection with the work described in Paragraphs II, a, b, c and d above . . . .

(f) all other work in connection with or incidental thereto.

We find that section (e) of the above agreement encompasses the movement of roofing gravel at ground level and that section (f) is broad enough to cover cleanup duties. Thus, the Employer's collective-bargaining agreement with the Roofers covers the work in dispute.

The Employer has no contract with the Laborers. We conclude, therefore, that the relevant collective-bargaining agreement favors an assignment of the disputed work to employees represented by the Roofers.

2. Employer preference, assignment, and past practice

The Employer assigned the work here to roofers and prefers an assignment to that group of employees. It presented evidence that on a prior job in the same general geographical area it used employees represented by the Roofers to handle gravel and to clean up roofing debris. We find the factors of employer preference, assignment, and past practice favor an award to employees represented by the Roofers.

3. Industry practice

The Employer presented testimony from three of its competitors working within a 100-mile radius of this project. One of them uses employees represented by the Roofers, exclusively, for the disputed work while the other two competitors regularly use employees represented by the Roofers for the transport of gravel, though they both mentioned isolated examples when employees represented by the Laborers did cleanup work. The Laborers presented evidence that its employees had shoveled gravel and done cleanup on other projects. We find that the industry practice is mixed and favors neither group of employees.

4. Economy and efficiency of operation

The Employer's president testified that it would take about 1 hour daily to shovel gravel and another hour daily to do cleanup. He further testified that, because both tasks are normally done at the end of each workday, if the Employer were to hire employees represented by the Laborers it would have to hire two people and pay each of them for a full 8-hour day even though it only had 1 hour's worth of work for each one. However, if roofers did the disputed work, the employees doing the disputed work could do other roofers' chores the remainder of the workday. Although the Laborers argued that, if the Employer hired laborers to do the disputed work, those hired could also do other chores, there is nothing here to indicate that any such work was available. Thus, the factor of economy and efficiency favors assignment of the disputed work to employees represented by the Roofers.

5. Skills

The work does not require any special skill. Therefore both groups of employees are equally capable of performing the work. This factor favors neither group of employees.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by the Roofers are entitled to perform the work in dispute. We reach this conclusion relying on the collective-bargaining agreement, the Employer's preference, assignment, and past practice, and efficiency and economy of operation, all of which favor an award of the disputed work to the employees represented by the Roofers. In making this determination, we are awarding the work in question to employees who are represented by the Roofers, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Hannin Roofing and Sheet Metal Company, Inc., who are represented by United Slate, Tile and Composition Roofers, Damp and Waterproof Workers' Association Local 208, are entitled to move (i.e., shovel) roofing gravel at ground level and to the daily cleanup of debris resulting from the application of roofing materials at the Sikeston power plant in Sikeston, Missouri.

2. Laborers International Union of North America, AFL-CIO, Local 282, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Hannin Roofing and Sheet Metal Company, Inc., to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, Laborers International Union of North America, AFL-CIO, Local 282, shall notify the Regional Director for Region

14, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconistent with the above determination.